

PETROSTATES RESOURCES, INC.

IBLA 85-545

Decided August 12, 1986

Appeal from a decision of the Colorado State Office, Bureau of Land Management, affirming an incident of noncompliance. CO-016-INC-184.

Reversed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Civil Assessments and Penalties

Where BLM issues an incident of noncompliance for failure of the transporter to "isolate the sales tank" during the "sales phase" and assesses the oil and gas lease operator \$ 250 in accordance with 43 CFR 3163.3(j), and on appeal the record indicates the transporter had not transferred any oil or engaged in any activity which would violate the integrity of the storage system, the "sales phase" had not commenced and the violations and assessments will be overturned.

APPEARANCES: John R. Wingert, President, Petrostates Resources, Inc.;
Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Petrostates Resources, Inc. (Petrostates), appeals from a March 29, 1985, decision of the Colorado State Office, Bureau of Land Management (BLM), affirming an Incident of Noncompliance (INC), CO-016-INC-184 (#184), issued February 28, 1985, and the resulting assessment of \$ 250 under 43 CFR 3163.3(j). The citation stated the sales tank had not been isolated during the sales phase, in violation of 43 CFR 3162.7-4.

Petrostates conducts oil and gas operations in secs. 26 and 27, T. 9 N., R. 78 W., sixth principal meridian, Jackson County, Colorado, under oil and gas lease C-26907. On February 28, 1985, BLM inspected the Petrostates operations conducted under the lease at Central Battery 5-27X and observed a tanker truck parked adjacent to the storage tanks at this location. The following statement appears in an account of the inspector's observations:

A load line was strung from the truck to the storage tanks. The driver of the truck stated that he was gauging the storage tank for sales.

Upon further inspection we observed an open unsealed valve on the fill line leading to the sales tank in question. The sales tank had not been effectively isolated during the sales phase. The appropriate valve was not sealed in the closed position. This was a clear violation of regulations (43 CFR 3162.7-4(b)(1))."

(Mar. 21, 1985, Memorandum to Kremmling Resource Area Manager from Surface Reclamation Specialist). As a result of those observations, BLM issued the notice of INC and subsequently levied an assessment of \$ 250 under 43 CFR 3163.3(j). ^{1/} The notice was received by Petrostates on March 12, 1985. By letter filed March 19, 1985, Petrostates requested a technical and procedural review pursuant to 43 CFR 3165.3. The Colorado State Office, BLM, reviewed and affirmed INC #184 stating:

[T]he records show that the inlet line valve on tank #1983, the intended sales tank, was in the open position when the transporter took the opening gauge, and production could still enter the tank. Therefore, tank #1983 was not isolated while in the gauging and sales phase and a violation of 43 CFR 3162.7-4 exists.

(Mar. 29, 1985, decision.)

In its notice of appeal, Petrostates presents the following claims:

Your decision to uphold CO-016-INC-184, which states that the sales tank was not isolated while in the sales phase, is based on incorrect information. It is not true that the inlet valve on tank #1983, the intended sales tank, was in the open position when the transporter took the opening gauge. At the time of the citation the transporter had not yet gauged the intended sales tank.

In an accompanying affidavit, Steve Wofford, driver of the transporter truck, states he did not take the opening gauge on tank #1983 before sealing the inlet line valve and isolating the sales tank. Petrostates argues the evident facts do not establish a "sales phase status."

[1] BLM relies in its decision on the following provision found in 43 CFR 3162.7-4(b): "Each operator of a Federal or Indian (except Osage) lease shall comply with the following minimum standards: (1) All appropriate

^{1/} Under 43 CFR 3163.3(j) an assessment of \$ 250 may be levied for "failure to maintain effective seals required * * * or for failure to maintain the integrity of any seal * * *."

Effective Mar. 22, 1985 (just prior to issuance of the decision appealed), BLM suspended assessments pursuant to 43 CFR 3163.3(c) through (j), except in cases of ascertainable actual damages, in anticipation of a revision of those regulations. See 50 FR 11517 (Mar. 22, 1985). Even if the INC here had been properly issued, it would be appropriate to vacate the assessment because of the suspension. Fuel Resources Development Co., 91 IBLA 242 (1986); Somont Oil Co., 91 IBLA 137 (1986).

valves on lines entering or leaving oil storage tanks shall be effectively sealed during the production phase and during the sales phase." Departmental regulation 43 CFR 3162.7-4(a) defines sales phase as "[t]hat period of time or mode of operation during which crude oil is removed from the storage facilities for sales, transportation or other purposes." (Emphasis added.) BLM construes the sales phase to commence "when the transport arrives on location" and recommends "[a]t that time a pumper should isolate the sales tank and proceed to take measurements" (Answer at 1). BLM contends the act of connecting a transfer line from the transport to the sales valve prior to isolating the tank "made the sales phase and the accountability process subject to question."

We agree that under prudent and proper procedures for this industry, a party intending to transport oil or gas will first isolate the sales tank before connecting the equipment necessary for removing oil or gas from a storage facility. However, the regulations do not support BLM's construction that the sales phase immediately begins with the appearance of a sales truck at the storage facility. The regulations provide for the sales phase to occur when "crude oil is removed." 43 CFR 3162.7-4(a).

The BLM record indicates that when the BLM investigators arrived at the central tank battery, Wofford (the transporter) had strung his hose to the fill line but was not removing fluid (Fred Johnson's Inspection notes for CO-26907, Feb. 28, 1985). The record does not show that the investigators determined exactly what Wofford had already done regarding gauging the sales tank or opening and closing valves. However, they did note: "The driver stated he was gauging the sales tank #1983" (Johnson's notes, id.). In the space provided on the INC served upon it, Petrostates responded to BLM's allegations as follows:

The transporter was not in the sales phase; load line seals had not been broken. The driver had checked the production valves to see what seals were needed and had returned to his truck to get them. He was preparing to switch tanks for production [and to] isolate the sales tank. No loading had commenced and no loadline seals on the sales tank had been broken at the time of the citation. The requested corrective action was done the same day just after being notified.

Moreover, in a handwritten statement signed by him and dated February 28, 1985, Wofford described the incident in part as follows: "He [the BLM inspector] asked me if I was loading and I told him no, that I was getting ready to. He then asked me if the sales tank was isolated and I said no. I was getting ready to go switch tanks."

At the time INC #184 was issued, BLM also issued INC CO-016-INC-183, which was overruled in BLM's March 29, 1984, decision. In this second INC, BLM charged appellant with a violation of 43 CFR 3162.7-1(c) because the "run ticket" produced by Wofford for the BLM investigators was "totally blank." A run ticket is a document which evidences the amount of oil run from a storage tank by showing the appropriate measurements taken before and after removal. See H. Williams & C. Meyers, Manual of Oil and Gas Terms, 787 (6th ed. 1984), also reprinted in 8 H. Williams & C. Meyers, Oil and Gas Law 787 (1984). In

its request for a technical and procedural review, Petrostates asserts the ticket was blank because the necessary measurements had not been taken prior to removing the crude oil. BLM stated its rationale for overruling this INC as follows:

The record shows that the transporter had not yet gathered all the pertinent data to complete the run ticket and that production was not yet transferred to the truck. According to the regulations (43 CFR 3162.7-1(c)(1)), a violation exists only when production is actually transferred to the truck from the tank without proper documentation.

By BLM's own admission, stored oil had not been removed and transferred to the waiting transporter. BLM states Wofford had not gauged and recorded measurements for the oil stored in the intended sales tank. Thus, Wofford still possessed an opportunity to close and seal the inlet line, isolate tank #1983, enter his starting measurements, and enter the necessary data on the run ticket prior to breaking the valve seal and opening the load transfer line.

We find BLM's determination that the sales phase had commenced is inconsistent with the published definition of the term "sales phase," i.e., the operation during which crude oil is removed. If Wofford had gauged and recorded the amount of oil in the tank before closing and sealing the open line, the integrity of the site security system would have been compromised. See 43 CFR 3162.7-4. A definite violation would have existed if he had broken the seal on the load line valve and opened the valve before he closed the inlet line valve. However, the record does not demonstrate either situation existed or a violation of 43 CFR 3162.7-4(b)(1) existed because Wofford failed to effectively seal all appropriate valves during the sales phase. 2/ INC #184 was premature and therefore improperly issued.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is reversed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski Anita Vogt
Administrative Judge

Alternate Member

2/ As previously noted the best procedure in this case would have been to isolate the storage tank before connecting the hose from the transporter to the outlet valve. However, the present regulations cannot be fairly read to dictate this procedure. A regulation should be sufficiently clear to put an affected party on notice of the procedure to be followed in order to avoid the assessment of penalties.

